

UNITED STATES DISTRICT COURT
NORTHERN DISTRICT OF NEW YORK

**PATRICIA A. GILFUS, WERNER L. FLIER, D.D.S.,
RICHARD B. GILFUS, JR., JOHN S. GILFUS, Pro Se,
In Propona Personsa,**

Plaintiffs,

v.

5:04-CV-1368 (HGM/DEP)

**THOMAS ADESSA; THOMAS P. STOPYRA; DAVID
O'CONNER; FRED WESTFAL; COUNTY OF
CAYUGA, NEW YORK, a Political Subdivision of the
State of New York; CAROL RUSSEL; CAYUGA
COUNTY SPCA; FINGERLAKES SPCA; CAROL
MALYS; COUNTY OF CAYUGA SPCA; JOHN DOE
and JANE DOE, Unlicensed Veterinarian Technician
Imposters, numbers 1-25, JOHN DOES and JANE
DOES, County Attorneys, CAYUGA COUNTY, NEW
YORK; MARY BOWEN; CHARLENE WOOD;
TOWN OF MENTZ; NEW YORK, EARL MILLS;
JACK O'NEILL; HON. RICHARD WARRICK, JUDGE,
In His Official Capacity only; ART LUKE; JEANNETTE
SPARE; NEW YORK STATE TROOPER, OFFICER
DUCKKETT; TROOPER BURN, TROOPER
MCILWAINE; TROOPER MIDDLETON; TROOPER
SUTTON; AILEEN SHERMAN; DOUGLAS ROSS; JANE
DOES AND JOHN DOES, NUMBERS 1-25; NEW YORK
STATE TROOPER MARTY MILLIMAN; FINGERLAKES
SPCA OF CENTRAL NEW YORK; COUNTY OF ONONDAGA,
NEW YORK; COUNTY ATTORNEY OF ONONDAGA,
NEW YORK; PATRICIA RICHARDS; BETSY PUFFER;
JEFFREY EYRE; STEVEN SWAN; LISA BOGNER;
UNKNOWN HUSBAND OF LISA BOGNER; BONNIE
REYNOLDS; JAMES TEDFORD; JENNIFER
METCALFE; JOANNA CELLINI; RICHARD GERBASI;
JOHN DOES AND JANE DOES located at LOLLYPOP
FARM, Fairport, New York; DR. DAVID SCOVILLE,
DVM; PARADISE VETERINARY PRACTICE; AL
KOBBER; DR. ELLEN BUCK, DVM; 100 JOHN DOES and
JANE DOES, Truckers; HELEN LANGERLAN; JESSICA
MARLAND; DR. HOLLY REID; BARBARA J.
CUMMINGS; BEAVER LAKE ANIMAL HOSPITAL,
Baldwinsville, New York; ASSISTANT DISTRICT
ATTORNEY DIANE ADSIT; JACK WOODS, THE NEW
YORK STATE ANIMAL CONTROL ASSOCIATION;**

**OSWEGO COUNTY SPCA; COUNTY OF OSWEGO;
OSWEGO COUNTY ATTORNEY; DIANE ADSIT,
FOUNDER AND TREASURER, “Feral Cat Friends, Inc.,”
individually and in her official capacity; ASSISTANT
DISTRICT ATTORNEY CHRISTOPHER VALDINA;
DISTRICT ATTORNEY JAMES VARGASON;
ASSISTANT DISTRICT ATTORNEY JON
BUDDLEMAN; CAYUGA COUNTY, NEW YORK,
DISTRICT ATTORNEY’S OFFICE; DOROTHY
AINSWORTH, CHIEF OF SERVICE, CORNELL
UNIVERSITY; THOMPkins COUNTY ATTORNEY,
Ithaca, New York; DR. JAMES GRAY; JOHN P.
HUNTLEY, DVM; DR. JOHNSON SEWARD; DR.
DAVID SMITH; UNITED STATES DEPARTMENT OF
AGRICULTURE; SHERIFF PETER PINCKNEY;
SHERIFF ROBERT OUTHOUSe; LT. JOHN
LAMPHERE; UNDERSHERIFF JAMES TABER;
STEPHEN MCLoud; DEPUTY SHERIFF MICHAEL
LUPO; DEPUTY SHERIFF PAUL BENTON;
AUXILIARY DEPUTY MARVENTANO; DEPUTY
PETER VAN DITTO; CAYUGA COUNTY, NEW YORK,
SHERIFF’S DEPARTMENT; JOANNE SANDANO;
ANN-MARIE LUCAS; MARK O’DONALD; GENESSEE
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MARKETS; DR. PEPI F. LEIDS; DAVID PHILLIPS;
KATHY PIERCEY; KATHY WEJKO; JENNIFER
SALONE; CHARLES FLUNO; MEGAN WILLIAMS,
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SOCIETY; POTTER LEAGUE FOR ANIMALS,
MIDDLETOWN, RHODE ISLAND; JEFF WYATT,
MPH, ACAMdipl; ALICE LEE CALABRESE; THE
HUMANE SOCIETY OF ROCHESTER AND MONROE
COUNTY, NEW YORK; THE ASPCA; THE ONONDAGA
COUNTY, NEW YORK SPCA; THE PORT BYRON,
NEW YORK, FIRE DEPARTMENT; ROBERT WARE;
OTHER UNKNOWN FIRE DEPARTMENT
PERSONNEL; SOCIETY FOR THE PREVENTION OF
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TEXAS; VET CHECK LABORATORY; BRUCE
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Defendants.

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HOWARD G. MUNSON
Senior United States District Judge

MEMORANDUM - DECISION AND ORDER

On November 26, 2004, *pro se* Plaintiffs Patricia A. Gilfus, Werner L. Flier, D.D.S., Richard B. Gilfus, and John S. Gilfus filed their “Complaint” against the above-captioned Defendants who number well-over one hundred.¹ Plaintiffs’ diffuse and rambling Complaint alleges that “Defendants . . . engaged in a conspiracy . . . to deny . . . Plaintiffs their civil rights and Constitutional rights, under color of state law.” Dkt. No. 1, Compl. at ¶ 1. Currently before the Court are a bevy of motions: (1) Defendants Ricardo T. Galbato, Esq., Mark H. Fandrich, Karpinski, Stapelton & Fandrich, P.C., move to dismiss Plaintiffs’ Complaint pursuant to Rule 12(b)(6) of the Federal Rules of Civil Procedure for failure to state a claim upon which relief can be granted, Dkt. No. 12, Notice of Mot.; (2) Defendants Patricia Richards, Betsy Puffer and the Onondaga County New York SPCA

¹This action shares much in common with civil actions 5:03-CV-578 and 5:04-CV-1379. All three actions share multiple defendants in common, arise from a common event and set of circumstances and raise nearly identical issues of fact and law. In addition, Werner Flier, the lone Plaintiff from civil action 5:03-CV-578 not to have joined in civil action 5:04-CV-1379, is among Plaintiffs in the instant case.

move to dismiss Plaintiffs' Complaint pursuant to Rules 12(b)(6) and Rule 9(b) of the Federal Rules of Civil Procedure, Dkt. No. 16, Notice of Mot.; (3) Defendants Oswego County and Oswego County Attorney move to dismiss Plaintiffs' Complaint pursuant to Rule 12(b)(6) of the Federal Rules of Civil Procedure, Dkt. No. 17, Notice of Mot.; (4) Defendants Dorothy Ainsworth, Peter Scrivani and Cornell University (sued as Cornell University Hospital for Animals and Diagnostic Lab) move to dismiss Plaintiffs' complaint pursuant to Rule 12(b)(6), Dkt. No. 18, Notice of Mot.; (5) Defendants David O'Connor (sued as David O'Conner), Frederick Westphal (sued as Fred Westfal), the County of Cayuga, New York, Defendants sued as "County Attorneys," Cayuga County Sheriff Robert Outhouse, Defendant sued as Cayuga County, New York Sheriff's Department, Cayuga County, New York, Deputy Sheriff Michael Lupo and Defendant sued as Cayuga County Sheriff's Office move to dismiss Plaintiffs' Complaint pursuant to Rules 12(b)(6), (c) and (f) and 9(b) and move for an order precluding Werner Flier from filing any complaints against Defendants without leave of the Court, Dkt. No. 28, Notice of Mot.; (6) Defendants Assistant District Attorney Christopher Valdina, District Attorney James Vargason, Assistant District Attorney Jon Budelmann, sued as Assistant District Attorney Jon Buddleman, Defendant sued as Cayuga County, New York District Attorney's Office and Defendant sued as Cayuga County District Attorney's Office move to dismiss Plaintiffs' Complaint pursuant to Rules 12(b)(6), (c) and (f) and 9(b) and move for an order precluding Werner Flier from filing any complaints against Defendants without leave of the Court, Dkt. No. 31, Notice of Motion; (7) Defendants Port Byron Fire Department and members of the Port Byron Fire Department move to dismiss Plaintiffs' Complaint pursuant to Rules 8, 12(b)(6), (c) and (f), Dkt. No. 33, Notice of Mot.; (8) Defendants the Stevens-Swan Humane Society of Oneida County, Inc., sued as Steven Swan, move to dismiss Plaintiffs' Complaint pursuant to Rule 12(b)(6) of the Federal Rules of Civil Procedure, Dkt. No 36, Notice of Mot.; (9) Defendants sued

as Jennifer Metcalfe, Joanna Cellini, Richard Gerbasi, John Does, located at Lollypop Farm, Fairport, New York, Jane Does, located at Lollypop Farm, Fairport, New York, Dr. David Scoville, DVM, Paradise Veterinary Practice, Alice Lee Calabrese, The Humane Society of Rochester and Monroe County, New York, and Eugene Welch, Esq., Harris, Chesworth, and O'Brien move to dismiss Plaintiffs' Complaint pursuant to Rule 12(b)(6), Dkt. No. 37, Notice of Mot.; (10) Defendants Lt. John Lamphere, Undersheriff James Taber, Stephen McLoud, Deputy Sheriff Paul Benton, Robert Ware, Auxiliary Deputy Marventano and Deputy Peter Van Ditto move to dismiss Plaintiffs' Complaint pursuant to Rules 12(b)(6), (c), (f) and 9(g) and move for an order precluding Werner Flier from filing any complaints against Defendants without leave of the Court, Dkt. No. 41, Notice of Mot.; (11) Defendant Dallas Society for the Prevention of Cruelty to Animals, d/b/a SPCA of Texas, sued as Society for the Prevention of Cruelty to Animals of Texas, moves to dismiss Plaintiffs Complaint pursuant to Rules 12(b)(2), 12(b)(6) and 8(a) of the Federal Rules of Civil Procedure, Dkt. No. 44, Notice of Mot.; (12) Defendants Thomas Adessa, Carol Russell, Fingerlakes Society for the Prevention of Cruelty to Animals of Central New York, sued as Fingerlakes SPCA and Carol Malys, move to dismiss Plaintiffs' Complaint pursuant to Rules 12(b)(6), (c) and (f) and Rule 9(b) of the Federal Rules of Civil Procedure, Dkt. No. 45, Notice of Mot.; (13) Defendants George E. Duckett, Raymond Sutton, Kelly Wejko, Jennifer Salone and Jeannette M. Dockstader, sued as Jeannette Spare, move to dismiss Plaintiffs' Complaint pursuant to Rule 12(b)(6) of the Federal Rules of Civil Procedure, Dkt. No. 46, Notice of Mot., Dkt. No. 51, Letter; (14) Defendant Erin P. Champion moves to dismiss Plaintiffs' Complaint pursuant to Rules 12(b)(6), (c) and (f) and Rule 9(b) of the Federal Rules of Civil Procedure, Dkt. No. 49, Notice of Mot.; (15) Defendants the Town of Mentz, Charlene Wood, Earl Mills (deceased), Jack O'Neil, Mary Bowen and the Honorable Richard Warrick move to dismiss Plaintiffs' Complaint pursuant to Rules 12 and 9 of the

Federal Rules of Civil procedure and move for summary judgment pursuant to Rule 56 of the Federal Rules of Civil Procedure, Dkt. No. 58, Notice of Mot; (16) Defendants Bruce Campbell, DVM, and Vet Check Laboratory move to dismiss Plaintiffs' Complaint pursuant to Rules 12(b)(6) and 9 of the Federal Rules of Civil Procedure, Dkt. No. 59, Notice of Mot.; (17) Defendant Dallas Society for the Prevention of Cruelty to Animals, d/b/a SPCA of Texas, sued as Society for the Prevention of Cruelty to Animals of Texas, takes an additional crack at Plaintiffs' Complaint and moves to dismiss it pursuant to Rule 12(b)(1) of the Federal Rules of Civil Procedure, Dkt. No. 60, Notice of Mot.; (18) Defendant Jeffrey Eyre moves to dismiss Plaintiffs' Complaint pursuant to Rule 12(b)(6) of the Federal Rules of Civil Procedure, Dkt. No 61, Notice of Mot.; (19) Defendant Thomas P. Stopyra moves to dismiss Plaintiffs' Complaint pursuant to Rules 12(b)(6), (c) and (f) and 9(b) of the Federal Rules of Civil Procedure, Dkt. No. 63, Notice of Mot. (collectively "Defendants"). For the reasons set forth below, the Court GRANTS Defendants' Rule 12 and Rule 9 motions to dismiss Plaintiffs' Complaint.

BACKGROUND

I. Plaintiffs' Complaint: Allegations and Relief Sought

Plaintiffs' disjointed Complaint alleges that Defendants caused an illegal search warrant to be issued and then relied upon said search warrant to raid the Gilfus Farm on December 1, 2001. *See* Dkt. No. 1, Compl. at ¶ 45. Plaintiffs allege that Adessa "created and utilized stale inventory lists regarding the animals at the Gilfus farm . . . [and] use[d] them for fraudulent . . . purposes" *Id.* Plaintiffs allege that Defendants caused them to suffer: (1) an illegal search and seizure, *see id.* at ¶ 47; (2) the denial of their procedural and substantive due process; (3) unlawful taking of their property; (4) false arrest and false imprisonment, *see id.* at ¶¶ 5-6; and (5) the deprivation of rights secured by the Fourth, Fifth and Fourteenth Amendments to the United States Constitution, *see id.*

at ¶ 26. Plaintiffs further allege that Defendants are “guilty of” fraud, obstruction of justice, negligent hiring, training and supervision. *See* Dkt. No. 1, Compl. at ¶¶ 27-28. In addition, Plaintiffs allege that Defendants actions constitute a pattern racketeering in violation of the Racketeer Influenced and Corrupt Organizations Act, 18 U.S.C. § 1962 (“RICO”). *See id.* at ¶¶ 23(a), 46. In support of their Civil RICO claim, Plaintiffs assert that Defendants: (1) filed false affidavits and police reports; (2) published a false account of the raid on the Gilfus farm; (3) committed perjury before a Grand Jury; (4) made repeated telephone calls in violation of 18 U.S.C. § 1343 (wire fraud); and (5) repeatedly utilized the United States Postal Service to mail various correspondence and documentation in violation of 18 U.S.C. § 1341 (mail fraud). *See id.* at ¶¶ 48-51. Finally, Plaintiffs allege that “so called ‘Animal Rescue Groups’ . . . have in fact operated . . . as Domestic Terrorist Organizations” *Id.* at ¶ 8. The Court infers from Plaintiffs’ allegations that during the raid, various animals were seized and removed from the Gilfus farm.

Plaintiffs seek equitable relief and a Writ of Quo Warranto. *See id.* at ¶ 11. Plaintiffs also seek “a permanent injunction and restraining order, enjoining . . . ‘SPCA’ type domestic terrorist organizations from . . . malignant, illegal, and unlawful actions” *Id.* at ¶¶ 12-22. Plaintiffs, however, further demand compensatory damages in an amount exceeding \$50,000,000. *Id.* at ¶ 37. In addition, Plaintiffs seek a Court Order “establishing a watchdog committee and Public Ombudsman, to investigate, monitor and coordinate with [a] Private Attorney General, which Plaintiffs are.” *Id.* at ¶ 15. Moreover, Plaintiffs seek a Court Order declaring Defendant Animal Rescue Groups’ charters null and void. *Id.* at ¶ 24.

II. Criminal Prosecutions

The raid resulted in criminal prosecutions against the above-captioned Gilfus Plaintiffs for failure to provide proper sustenance, *see* N.Y. AGRIC. & MKTS. LAW § 353 (McKinney). A jury

found the Gilfus Plaintiffs guilty, *see* Dkt. No. 10, Ex. C, and the Gilfus Plaintiffs appealed the judgments convicting them to the Fourth Department which affirmed the convictions. *See People v. Gilfus*, 4 A.D.3d 788, 772 N.Y.S.2d 164 (4th Dept. 2004) (Patricia Gilfus); *People v. Gilfus*, 4 A.D.3d 789, 771 N.Y.S.2d 452 (4th Dept. 2004) (Richard Gilfus, Jr.); *People v. Gilfus*, 4 A.D.3d 789, 771 N.Y.S.2d 452 (4th Dept. 2004) (John Gilfus). The New York Court of Appeals subsequently denied their applications leave to appeal. *See People v. Gilfus*, 1 N.Y.3d 628, 777 N.Y.S.2d 26, 808 N.E.2d 1285 (2004) (Patricia Gilfus); *People v. Gilfus*, 1 N.Y.3d 628, 777 N.Y.S.2d 26, 808 N.E.2d 1285 (2004) (Richard Gilfus, Jr.); *People v. Gilfus*, 1 N.Y.3d 628, 777 N.Y.S.2d 26, 808 N.E.2d 1285 (2004) (John Gilfus). Thus, with the exception of Werner Flier, Plaintiffs stand convicted of fourteen counts of failure to provide proper sustenance.

III. Civil Forfeiture

In a separate civil forfeiture case, on November 2, 2002, Cayuga County Court Judge Peter E. Corning granted motions by the Finger Lakes Society for the Prevention of Cruelty to Animals of Central New York and the Humane Society of Rochester and Monroe County, to take ownership of the 321 animals, including llamas, deer, goats, sheep, pigs, emus, turkeys, monkeys, horses, ponies, donkeys, geese, pigeons, and chickens, that had been seized on December 1st and 2nd, 2001. *See* Dkt. No. 12, Ex. E, Order. Previously, Plaintiffs Patricia Gilfus, Richard Gilfus, Jr. and John Gilfus, joined by Lisa Gilfus and Richard Gilfus, Sr., had entered into a stipulated court order to pay the Finger Lakes Society for the Prevention of Cruelty to Animals \$375 per month to house and take care of animals in its custody that were seized from the Gilfus farm. The Gilfus Plaintiffs and Lisa Gilfus and Richard Gilfus, Sr. had further agreed to pay the Humane Society of Rochester and Monroe County \$3,500 per month to care for animals in its custody that were seized from the Gilfus farm. *See id.*, Order of Forfeiture.

DISCUSSION

I. Plaintiffs' *Pro Se* Status

The Court recognizes that Plaintiffs filed their action *pro se* and thus holds them to a less stringent standard and liberally construes their pleadings as required by Haines v. Kerner, 404 U.S. 519, 520, 30 L.Ed.2d 652, 92 S.Ct. 594 (1972); *see also* Gonzalez v. Crosby, 125 S.Ct. 2641, 2655, 545 U.S. 524, 524, 162 L.Ed.2d 480 (2005). *Pro se* status, however, does not insulate litigants from all legal attacks, and *pro se* litigants must comply “with relevant rules of procedural and substantive law.” Traguth v. Zuck, 710 F.2d 90, 95 (2d Cir. 1983) (quotation marks omitted).

II. Legal Standards: Rule 12(b) and (c)

A dismissal under Rule 12(b)(6) of the Federal Rules of Civil Procedure is a dismissal on the merits of the action, a determination that the facts alleged in the complaint fail to state a claim upon which relief may be granted. *See* Teltronics Services, Inc. v. LM Ericsson Telecomm., Inc., 642 F.2d 31, 34 (2d Cir. 1981). The standard for granting a Rule 12(c) motion for judgment on the pleadings is identical to that of a Rule 12(b)(6) for a motion for failure to state a claim. Patel v. Contemporary Classics of Beverly Hills, 259 F.3d 123, 126 (2d Cir. 2001) (citing Irish Lesbian & Gay Org. v. Giuliani, 143 F.3d 638, 644 (2d Cir. 1998)). Such a dismissal is appropriate where “it appears beyond doubt that the plaintiff can prove no set of facts in support of [its] claim which would entitle [it] to relief.” Harris v. City of New York, 186 F.3d 243, 247 (2d Cir. 1999). Therefore, the issue before the court on such a motion “is not whether a plaintiff will ultimately prevail but whether the claimant is entitled to offer evidence to support the claims.” King v. Simpson, 189 F.3d 284, 287 (2d Cir. 1999). “The task of the court in ruling on a Rule 12(b)(6) motion is merely to assess the legal feasibility of the complaint, not to assay the weight of the evidence which might be offered in support thereof.” Cooper v. Parsky, 140 F.3d 433, 440 (2d Cir. 1998) (internal quotations omitted).

Accordingly, in order to decide a Rule 12(b)(6) motion, the court must accept as true all of the allegations in the complaint and all reasonable inferences that can be drawn therefrom, and view them in a light most favorable to the non-moving party. *See Harris*, 186 F.3d at 247. However, a “complaint which consists of conclusory allegations unsupported by factual assertions fails even the liberal standard of Rule 12(b)(6).” *De Jesus v. Sears, Roebuck & Co.*, 87 F.3d 65, 70 (2d Cir. 1996) (internal quotations omitted).

When deciding a Rule 12(b)(6) motion, the court generally limits itself to the facts stated in the complaint, documents attached to the complaint as exhibits, or documents incorporated by reference in the complaint. *See Dangler v. New York City Off Track Betting Corp.*, 193 F.3d 130, 138 (2d Cir. 1999). If the court looks to additional materials, the motion should be converted into a motion for summary judgment. *See Hayden v. County of Nassau*, 180 F.3d 42, 54 (2d Cir. 1999). However, where the Court simply refers to supplementary materials, but does not rely to them or use them as a basis for its decision, the 12(b)(6) motion is not converted into a motion for summary judgment. *See id.* With this standard in mind, the Court turns to the sufficiency of Plaintiffs’ claims, which are plagued by numerous deficiencies.

III. Defendants’ Motions

A common theme runs through Defendants’ motions to dismiss Plaintiffs’ Complaint, namely that Plaintiffs fail to allege with any specificity how any particular Defendant participated in the alleged conspiracy to deny them of their constitutional rights. Indeed, almost without exception, Plaintiffs’ Complaint repeatedly references “Defendants” rather than distinguishing between the one-hundred plus named defendants. Plaintiffs single-out Adessa, *see* Dkt. No. 1, Compl. at ¶ 45, and vaguely reference “Animal Rescue Groups” and “SPCA’ type organizations, *see, e.g., id.* at ¶¶ 16, 18, but their reference is of little help because they name, by the Court’s count, at least eight SPCA

and Humane Society-type organizations in their Complaint.

“[I]t is well settled that to state a civil rights claim under § 1983, a complaint must contain specific allegations of fact which indicate a deprivation of constitutional rights; allegations which are nothing more than broad, simple, and conclusory statements are insufficient to state a claim under § 1983.” Alfaro Motors, Inc. v. Ward, 814 F.2d 883, 887 (2d Cir. 1987). “[C]ourts have consistently held that, where the complaint names a defendant in the caption but contains no allegations indicating how the defendant violated the law or injured the plaintiff, a motion to dismiss the complaint in regard to that defendant should be granted.” Morabito v. Blum, 528 F.Supp. 252, 262 (S.D.N.Y. 1981) (citing cases). Plaintiffs’ allegations fail to explain with the requisite level of specificity how Defendants violated the law or caused any damages to Plaintiffs. The Court finds that dismissal is appropriate on this basis. *See Jochnowitz v. Russell Sage College*, 1992 WL 106813, at *1 (N.D.N.Y. May 13, 1992).

Therefore, Defendants’ motions to dismiss Plaintiffs’ Complaint are GRANTED for failure to state a claim upon which relief can be granted. This dismissal is without prejudice. If Plaintiffs intend to further pursue their claims, the Court strongly advises them to consult an attorney before filing a new action with this Court.

CONCLUSION

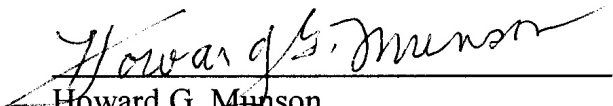
WHEREFORE, after careful consideration of the file in this matter including the parties' submissions and the applicable law, the Court hereby

GRANTS without prejudice Defendants' motion for judgment on the pleadings and **DISMISSES** Plaintiffs' Complaint in its entirety as against all Defendants, and further

Directs the Clerk of the Court to enter judgment in Defendants' favor and against Plaintiffs Dismissing the case in its entirety without prejudice.

IT IS SO ORDERED.

Dated: September 30, 2006
Syracuse, New York


Howard G. Munson
Senior U.S. District Judge